

1. **Parties.** This is a contract for personal services between the State of Vermont, Department of Health (hereafter called "State"), and **Milliman, Inc.**, with a principal place of business in **15800 Bluemound Road, Suite 400, Brookfield, WI 53005** (hereafter called "Contractor"). Contractor's form of business organization is a **firm of Consultants and Actuaries**. Contractor is (or is not) required by law to have a Business Account Number from the Vermont Department of Taxes. The Account Number is:
2. **Subject Matter.** The subject matter of this contract is personal services generally on the subject of **Psychiatric Inpatient Bed Need Projection**. Detailed services to be provided by the Contractor are described in Attachment A.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed **\$78,100.00**.
4. **Contract Term.** The period of Contractor's performance shall begin on **February 13, 2006** and end on **April 10, 2006**.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office **is** required.
Approval by the Secretary of Administration **(is/or is not)** required.
6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
7. **Cancellation.** This contract may be cancelled by either party by giving written notice at least thirty (30) days in advance.
8. **Attachments.** This contract consists of **25** pages, including the following attachments, which are incorporated herein:
Attachment A - Specifications of Work to be Performed
Attachment B - Payment Provisions
Attachment C - "Customary State Contract provisions"
Attachment D - Modifications of Attachment C
Attachment E - Business Associate Agreement
Attachment F - AHS Policy 96-23

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D
- 3). Attachment C (modified by D)
- 4). Attachment A
- 5). Attachment B
- 6). Attachment E (if applicable)
- 7). Attachment F
- 8). Other Attachments (if applicable)

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.

BY THE STATE OF VERMONT:

BY THE CONTRACTOR:

Date: 2/15/06

Date: 2-13-06

Signature: Paul R. Blake

Signature: David Ogden

Name: Paul R. Blake

Name: David Ogden

Title: Dep Comm of M H

Fed. ID/SS#: 91-0675641

Agency/Dept.: Human Services/Health Dept.

Title: Consulting Actuary

Phone: 262-796-3419

e-mail: dave.ogden@milliman.com

Alternative Contact: (If Applicable)

APPROVED AS TO FORM:

Attorney General: W. A. B.

Date: 1/31/06

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

Overview

To help determine the needed inpatient psychiatric bed capacity for adults to replace the Vermont State Hospital (VSH) as part of the Vermont Mental Health Futures initiative the scope of this contract will include:

- The recommended bed capacity to replace VSH at two levels of care (specialized inpatient and intensive care inpatient), 10 years into the future;
- with consideration for the recommended bed capacity for general psychiatric inpatient care (the third level of care) state-wide, 10 years into the future.

The analysis (projected bed need) will consider the impact of Vermont's community based system of care for mental health services, including the development of new programs as envisioned in the Futures Plan.

The analysis (projected bed need) will address the impact of expected trends in mental health services on inpatient programs including: Medicare prospective payments, outpatient funding trends, trends impacting the Corrections population, expected clinical co-morbid conditions and community hospital plans, such as critical access designation.

The contractor will provide the State with a written report that includes an explanation of all data sources and their limitations and methodologies. The contractor will identify the assumptions used in establishing bed capacity need into the future. This written report is due within two months of the execution (beginning) of this contract.

Detail

1. Milliman will collect Vermont-specific data to evaluate historical use of psychiatric inpatient services

The Vermont Hospital Discharge Data File (public use file) 2000-2004

Vermont Department of Corrections Data (data and key informant interview)

Health Resource Allocation Plan and Community Needs Assessment

Vermont State Health Plan

Vermont State Hospital Futures Plan (February 4, 2005)

System Evaluation and Five Year Projection (The "DA Provider Sustainability Study: November 2004)

Hospital Monograph Series

Service Encounter data from the VSH Information System and the MH Managed Care Information System

2. Milliman will collect other MH system data for comparability in use of psychiatric inpatient services

Dane County, WI

Other system deemed comparable

MH trend information

3. Evaluate how the use of psychiatric inpatient services at three level of care may change in the next ten years in Vermont based on:

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED (continued)

Implementation of the VSH Futures Plan

Key informant interviews (on-site)

Consideration of Vermont's community based system of care

Demographic and incidence / prevalence trends

Inpatient funding trends including Medicare prospective payments

4. Based on the work above, develop an actuarially sound estimate the psychiatric in patient bed capacity (number of beds) for each of three levels of care: general psychiatric inpatient and the VSH replacement (specialized and intensive care) for 10 years into the future.

5. Prepare a written report of the projected inpatient bed capacity needed including a description of the methodology used, assumptions, and limitations of these.

**ATTACHMENT B
PAYMENT PROVISIONS**

The maximum dollar amount payable under this agreement is not intended to guarantee any amount of payment under this contract. The Contractor will be paid at the billable rates for services actually performed, up to the maximum allowable amount of **\$78,100.00**.

MILLIMAN, INC.
2/13/06 – 4/10/06

Activity/Expense

Collect Data/Initial Meeting	\$ 9,900
Evaluate historical use of MH services in VT	16,500
Evaluate how the current use of MH services will change under the Futures Plan	16,100
Evaluate other factors that will affect future IP usage	7,900
Project IP usage rates by level of care and county	9,800
Produce a written report	<u>12,100</u>
Sub-total:	\$ 72,300
Other expenses (telephone, travel, etc.)	<u>\$ 5,800</u>
TOTAL:	\$ 78,100

Revenue

State General Funds	\$ 78,100
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Payment Provisions

- 1) Upon monthly invoices from the Contractor, the State agrees to pay the Contractor for appropriate costs incurred as detailed in the above budget. Invoices will detail month being invoiced and expenses by line item, above. Invoices shall include the Contractor's name and address, federal tax ID number, and will be signed and dated. The State will initiate payment to the Contractor upon receipt of acceptable invoices.
- 2) Contractor may transfer between line items in the Budget, up to a maximum of 10% or \$500.00, whichever is greater. Any requests for budget adjustments greater than that amount must be submitted in writing to the State for prior approval.
- 3) Claims for payment not made by the Contractor in writing to the State and/or not received within sixty (60) days of the expiration of the contract performance period will not be honored by the State for payment, nor will claims received for services provided after the cancellation or other termination of the contract.
- 4) All invoices shall be sent to Doug Clifton, MH Financial Management Specialist, Department of Health, Division of Mental Health, PO Box 70, Burlington, VT 05402-0070.

ATTACHMENT C

CUSTOMARY STATE CONTRACT PROVISIONS

1. **Entire Agreement.** This contract represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law.** This contract will be governed by the laws of the State of Vermont.
3. **Appropriations.** If this contract extends into more than one fiscal year of the state (July 1 to June 30), and if appropriations are insufficient to support this contract, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriations authority.
4. **No Employee Benefits for Contractors.** The Contractor understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation and sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any federal or state taxes except as required under applicable tax laws, which shall be determined in advance of execution of the contract. The Contractor understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Contractor, and information as to contract income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
5. **Independence, Liability.** The Contractor will act in an independent capacity and not as officers or employees of the State. The Contractor shall indemnify, defend and hold harmless the State and its officers and employees from liability and any claims, suits, judgments, and damages arising as a result of the Contractor's acts and/or omissions in the performance of this contract. The Contractor shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this contract.
6. **Insurance.** Before commencing work on this contract the Contractor must provide certificates of insurance to show that the following minimum coverage are in effect. The Contractor must notify the State no more than 10 days after receiving cancellation notice of any required insurance policy. It is the responsibility of the Contractor to maintain current certificates of insurance on file with the State through the term of the contract. Failure to maintain the required insurance shall constitute a material breach of this contract.

Workers Compensation: With respect to all operations performed, the Contractor shall carry workers compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Contractor shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Independent Contractors' Protective
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire Legal Liability

Automotive Liability: The Contractor shall carry automotive liability insurance covering all owned, non-owned and hired vehicles used in connection with the contract. Limits of coverage shall not be less than: \$1,000,000 Combined single limit.

Professional Liability: Before commencing work on this contract and throughout the term of this contract, the Contractor shall procure and maintain professional liability insurance for any and all services performed under this contract, with minimum coverage of \$ _____ per occurrence.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Contractor for the Contractor's operations. These are solely minimums that have been set to protect the interests of the State.

7. **Reliance by the State on Representations:** All payments by the State under this contract will be made in reliance upon the accuracy of all prior representations by the Contractor, including but not limited to bills, invoices, progress reports and other proofs of work.
8. **Records Available for Audit.** The Contractor will maintain all books, documents, payroll, papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the contract and for three years thereafter for inspection by any authorized representatives of the State or Federal government. If any litigation, claim or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this contract.
9. **Fair Employment Practices and Americans with Disabilities Act:** Contractor agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Contractor under this contract. Contractor further agrees to include this provision in all subcontracts.
10. **Set Off:** The State may set off any sums which the Contractor owes the State against any sums due the Contractor under this contract; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

11. **Taxes Due to the State.**

- a. Contractor understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- b. Contractor certifies under the pains and penalties of perjury that, as of the date the contract is signed, the Contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- c. Contractor understands that final payment under this contract may be withheld if the Commissioner of Taxes determines that the Contractor is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Contractor also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Contractor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Contractor has no further legal resource to contest the amounts due.

12. **Child Support.** (Applicable if Contractor is a natural person, not a corporation or partnership.) Contractor states that, as of the date the contract is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Contractor makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Contractor is a resident of Vermont, Contractor makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

13. **Subcontractors.** The Contractor shall not assign or subcontract the performance of this agreement or any portion thereof to any other contractor without the prior written approval of the State. Contractor also agrees to include in all subcontract agreements a tax certification in accordance with paragraph 11 above.

Notwithstanding the foregoing, the State agrees that the Contractor may assign this contract, including all of the Contractor's rights and obligations hereunder, to any successor in interest to the Contractor arising out of the sale of or reorganization of the Contractor.

14. **No Gifts or Gratuities.** Contractor shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this contract.

15. **Copies.** All written reports prepared under this contract will be printed using both sides of the paper.

16. **Access to Information.** The Contractor agrees to comply with the requirements of AHS Rule No. 96-23 concerning access to information. The Contractor shall require all of its employees performing services under this contract to sign the AHS affirmation of understanding or an equivalent statement.
17. **Suspension and Debarment.** Non-federal entities are prohibited by Executive Orders 12549 and 12689 from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all non-procurement transactions (sub-awards to sub-recipients). By signing this contract, current Contractor certifies as applicable, that the contracting organization and its principals are not suspended or debarred by GSA from federal procurement and non-procurement programs.
18. **Health Insurance Portability & Accountability Act (HIPAA).** The confidentiality of any health care information acquired by or provided to the independent contractor shall be maintained in compliance with any applicable state or federal laws or regulations.
19. **Abuse Registry.** The Contractor agrees not to employ any individual, or use any volunteer, to provide for the care, custody, treatment, or supervision of children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid childcare license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Abuse Registry. (See 33 V.S.A. §4919 & 33 V.S.A. §6911).
20. **Voter Registration.** When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of State and Federal law pertaining to such agencies.
21. **Non-Discrimination Based on National Origin as evidenced by Limited English Proficiency.** The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and sub-grantees receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

**ATTACHMENT D
MODIFICATION OF ATTACHMENT C**

The requirements contained in Attachment C are hereby modified:

1. **Limitation of liability.** Contractor will perform all services in accordance with applicable professional standards. The parties agree that Contractor's (including its officers, directors, agents and employees) total liability to the State of Vermont under this Contract, whether in an action in negligence, tort, contract or otherwise, shall not exceed (ten) 10 times the fees paid to Contractor under this Contract. In no event shall Contractor be liable for lost profits of the State or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of the Contractor or with respect to any claims of personal injury or damage to physical property. This provision does not involve or pertain to third parties and their claims for losses, damages, liability and other expenses.
2. **Dispute Resolution.** In the event of any dispute arising out of or relating to the engagement of Contractor by the State, the parties agree first to try in good faith to settle the dispute voluntarily with the aid of an impartial mediator who will attempt to facilitate negotiations. A dispute will be submitted to mediation by written notice to the other party or parties. The mediator will be selected by agreement by the parties. If the parties cannot agree on a mediator, a mediator will be designated by the American Arbitration Association at the request of a party. The mediation will be treated as a settlement discussion and therefore will be confidential. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties. In the event the parties are unable to resolve a dispute through mediation as set forth above, either party may initiate a lawsuit over such dispute. Each party waives its right to a jury trial in any judicial proceeding arising out of or relating to this Contract.
3. **Third Party Distribution.** Contractor's work is prepared solely for the use and benefit of the State in accordance with its statutory and regulatory requirements. Contractor recognizes that materials it delivers to the State may be public records subject to disclosure to third parties, however, Contractor does not intend to benefit and assumes no duty or liability to any third parties who receive Contractor's work in this fashion and may include disclaimer language on its work product so stating. To the extent that Contractor's work is not subject to disclosure under applicable public records laws, the State agrees that it shall not disclose Contractor's work product to third parties without Contractor's prior written consent; provided, however, that the State may distribute Contractor's work in its entirety to (i) its professional service providers who are subject to a duty of confidentiality and who agree to not use Contractor's work product for any purpose other than to provide services to the State, or (ii) any applicable regulatory or governmental agency, as required by state or federal law or court order.
4. **Choice of law.** This contract is the product of an arms length contract involving counsel for both parties that shall be governed by Vermont law.

5. Indemnity and Defense: Attachment C, Paragraph 5 of this contract pertaining to defense and indemnification is intended by the parties to include (i) defense of all claims, and/or lawsuits, including but not limited to actions for damages and/or for declaratory or injunctive relief, to the extent that they contain allegations that arise as a result of the Contractor's negligence and/or intentional misconduct in the performance of any services under this contract (intentional misconduct to include, without limitation, any intentional violation of law or duty of care to any person) whether or not the Contractor, an employee of the Contractor, or a subcontractor of the Contractor is a named party to the action and (ii) indemnification to the extent that any such claim or lawsuit results in a final determination, and/or settlement, that liability arose as a result of the Contractor's negligence and/or intentional misconduct in the performance of any services under this contract (intentional misconduct to include, without limitation, any intentional violation of law or duty of care to any person) whether or not the Contractor, an employee of the Contractor, or a subcontractor of the Contractor is a named party to the action. The parties do not intend Paragraph 5 of Attachment C to include liability for allegations that arise as a result of the acts, omissions, policies or procedures of the State, its officers or employees.

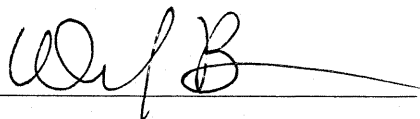
If the Office of the Attorney General or other representative of the State tenders a claim and/or lawsuit to Contractor for defense and indemnification in accordance with the aforementioned paragraph, the Contractor shall respond to the Attorney General or State within ten (10) business days of such tender. In the event a response to the claim or suit is required prior to the expiration of the ten (10) business days period of time, including but not limited to court action, the Contractor will be so notified. In the event the Contractor is properly notified by the Attorney General or Client that a response to the claim and/or court action by Contractor is required prior to the expiration of the ten (10) business day period, the Contractor shall be responsible to file such response and/or handle any court action. The Contractor's response to the Attorney General's or State's tendering of a claim or lawsuit shall include an acknowledgment of receipt of the claim and/or lawsuit, a response on defense and indemnification obligation, and the identity of counsel who will defend the claim and/or lawsuit.

In the event the Contractor fails to comply with any aspect of this provision, the Contractor shall be responsible for any and all costs and/or fees incurred by the Attorney General's Office and/or the State as a consequence of such non-compliance.

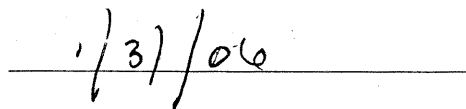
The Contractor agrees to cooperate with the Office of the Attorney General and the State in the investigation and handling of any claim and/or lawsuits in connection with the provision of services that are the subject of this contract. The Office of the Attorney General and the State may monitor the defense of all claims and/or lawsuits and the Contractor and local counsel shall cooperate fully with such monitoring. The Office of the Attorney General and the State retain the right to participate, at its own expense, in the defense and/or trial of any claim and/or lawsuit where the Contractor is providing the defense and indemnification of such claim and/or lawsuit. The Office of the Attorney General and the State shall have the right to approve all proposed settlements of such claims and/or lawsuits made on behalf of the State, or State employees.

Approval:

Assistant Attorney General:



Date:



ATTACHMENT E

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between **the State of Vermont, Department of Health and Milliman, Inc.** ("Business Associate"), as of **February 13, 2006** ("Effective Date").

Preliminary Statement. Covered Entity and Business Associate have entered into the Contract to which this Business Associate Agreement is an attachment pursuant to which Business Associate provides to Covered Entity certain services ("Services") which may require the use and/or disclosure of health information. For the avoidance of any doubt, "Services" includes all work performed by the Business Associate for or on behalf of Covered Entity. This Agreement supplements and is made a part of the Contract.

The parties enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 ("Privacy Rule"), and the Security Standards, at 45 CFR Parts 160 and 164 ("Security Rule").

Agreement. In consideration of the foregoing, and in consideration of the desire of Covered Entity to continue receiving Services, and of Business Associate to continue providing Services, the parties agree as follows:

1. **Definitions.** All capitalized terms in this Agreement have the meanings identified in this Agreement, 45 CFR Part 160, or 45 CFR Part 164. The term "Individual" includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g). All references to PHI mean Protected Health Information. All references to Electronic PHI mean Electronic Protected Health Information.
2. **Permitted and Required Uses/Disclosures of PHI.**
 - 2.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to the extent necessary to perform the Services required by this contract. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

- 2.2 Business Associate may make PHI available to its employees who need access to provide Services (provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions). Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents (including subcontractors), in accordance with Sections 6 and 14; or (b) as otherwise permitted by Section 3.
3. **Business Activities.** Business Associate may use PHI received in its capacity as a “Business Associate” to Covered Entity, if necessary, for its proper management and administration or to carry out its legal responsibilities. In addition, Business Associate may disclose PHI received in its capacity as “Business Associate” to Covered Entity, for its proper management and administration or to carry out its legal responsibilities, if a disclosure is Required by Law, or: (a) Business Associate obtains reasonable written assurances (via a written contract) from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person; and (b) the person promptly notifies Business Associate (who in turn will promptly notify Covered Entity) in writing of any instances of which it is aware in which the confidentiality of the PHI has been breached. All uses and disclosures of PHI for the purposes identified above must be of the minimum amount of PHI necessary to accomplish such purposes.
4. **Safeguards.** Business Associate shall implement and use appropriate safeguards to prevent the use or disclosure of PHI, other than as provided for by this Agreement. Business Associate shall identify in writing, upon written request from Covered Entity, all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.
5. **Reporting.** Business Associate shall report in writing to Covered Entity any use or disclosure of PHI in violation of this Agreement by Business Associate or its agents (including subcontractors). Business Associate shall provide such written report promptly after it becomes aware of any such use or disclosure. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such use or disclosure. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

6. **Agreements by Third Parties.** Business Associate shall ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity, agrees in a written contract to the same restrictions and conditions that apply through this Agreement to Business Associate, with respect to such PHI. By way of example, the written contract must include those restrictions and conditions set forth in Section 12. Business Associate must enter into the written contract before any use or disclosure of PHI by such agent, and such written contract must identify Covered Entity as a direct and intended third party beneficiary, with the right to enforce any breach of the contract concerning the use or disclosure of PHI. Business Associate shall provide a copy of the written contract to Covered Entity upon request. Business Associate may not make any disclosure of PHI to any agent without the prior written consent of Covered Entity.
7. **Access to PHI.** Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity to meet the requirements under 45 CFR 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Business Associate shall promptly forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.
8. **Amendment of PHI.** Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526, at the written request of Covered Entity. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Business Associate shall promptly forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.
9. **Accounting of Disclosures.** Upon the written request of Covered Entity, Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. Business Associate shall provide such information to Covered Entity to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Business Associate shall promptly forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.

10. **Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity (without regard to the attorney-client or other applicable legal privileges), upon written request, in the time and manner reasonably designated by Covered Entity, so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

11. **Termination.**

- 11.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity, or until all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, subject to Section 15.12.
- 11.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach, and Covered Entity may terminate each Services Agreement, without liability or penalty, if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate each Services Agreement, without liability or penalty, if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under this Agreement or any Services Agreement, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

12. Return/Destruction of PHI.

12.1 Except as otherwise set forth in Section 12.2., Business Associate shall, in connection with the expiration or termination of a Services Agreement, return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, and pertaining to that Services Agreement, that Business Associate still maintains in any form or medium (including electronic), within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of such PHI. Business Associate shall certify for Covered Entity, in writing, when all PHI has been returned or destroyed, and that Business Associate does not continue to maintain any PHI, with such certification to be provided during such thirty (30) day period.

12.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Covered Entity hereby acknowledges and agrees that infeasibility includes Business Associate's need to retain PHI for purposes of complying with its work product documentation standards; provided that, Business Associate shall return or destroy the PHI in accordance with Section 12.1 upon the expiration of the applicable retention period required under such work product documentation standards.

13. Notice/Training. Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI; and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in information security awareness training regarding the use, confidentiality, and security of PHI.

14. **Security Rule Obligations.** The following provisions of this Section 14 apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.
- 14.1 Business Associate shall implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing, upon request from Covered Entity, all of the safeguards that it uses to protect such Electronic PHI.
- 14.2 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees in a written contract to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into the written contract before any use or disclosure of Electronic PHI by such agent, and such written contract must identify Covered Entity as a direct and intended third party beneficiary, with the right to enforce any breach of the contract concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written contract to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any agent without the prior written consent of Covered Entity.
- 14.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an agent, including a subcontractor). Business Associate shall provide such written report promptly after it becomes aware of any such Security Incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident. The parties acknowledge and agree that this section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. Unsuccessful Security Incidents shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as any and all such incidents do not result in unauthorized access, use or disclosure of Covered Entity's Electronic PHI.

15. Miscellaneous.

- 15.1 Notwithstanding anything to the contrary in any Services Agreement, in no event shall any provision limiting Business Associate's liability to Covered Entity, including, but not limited to, provisions creating a cap on damages, excluding certain types of damages, limiting available remedies, or shortening a statute of limitations, present in any Services Agreement, apply with respect to any breach by Business Associate of any term of this Agreement.
- 15.2 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any Services Agreement, the terms of this Agreement shall govern, with respect to its subject matter. Otherwise, the terms of each Services Agreement continue in effect.
- 15.3 Any reference to "promptly" in this Agreement shall mean no more than seven (7) business days after the circumstance or event at issue has transpired. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended or renumbered.
- 15.4 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of a use or disclosure of PHI in violation of any provision of this Agreement.
- 15.5 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.
- 15.6 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.
- 15.7 In addition to applicable state law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule) in construing the meaning and effect of this Agreement.
- 15.8 This Agreement may be amended or modified, and any right under this Agreement may be waived, only by a writing signed by an authorized representative of each party.

- 15.9 Nothing express or implied in this Agreement is intended to confer, upon any person other than the parties hereto, any rights, remedies, obligations or liabilities whatsoever. Notwithstanding the foregoing, the Covered Entity in this Agreement is the Agency of Human Services. Covered Entity and Business Associate agree that the term "Covered Entity", as used in this Agreement, also means any other Department, Division or Office of the Agency of Human Services, to the extent that such other Department, Division, or Office has a relationship with Business Associate that would require, pursuant to the Privacy or Security Rules, entry into an agreement of this type.
- 15.10 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity.
- 15.11 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity, or creates or receives on behalf of Covered Entity, even if some of that information relates to specific Services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.
- 15.12 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI, as provided in Section 12.2; and (b) the obligation of Business Associate to provide an accounting of disclosures, as set forth in Section 9, survives the expiration or termination of this Agreement, with respect to accounting requests (if any) made after such expiration or termination.
- 15.13 This Agreement constitutes the entire agreement of the parties with respect to its subject matter, superseding all prior oral and written agreements between the parties in such respect.

ATTACHMENT F

Agency of Human Services Rule # 96-23 Final Adopted Rule for Access to Information

Definition.

“Agency” means the Agency of Human Services or any of the offices, departments or programs that comprise the Agency.

“AHS” means the Vermont Agency of Human Services.

“Client” means an individual or family who is voluntarily served by a department, office, program, Contractor or grantee of the Agency of Human Services.

“Contractor” means an individual or entity with whom the Agency or any of its departments, offices, or programs has a contract to provide personal services.

“Employee” means any person who works in a full-time, part-time, temporary or contractual position for the Agency or any of its departments, offices, or programs.

1.6 “Grantee” means an individual or entity with whom the Agency or any part thereof has a grant to provide personal services.

1.7 “Program” means a set of services, (such as determining and processing ANFC benefits, verifying and setting up delivery for WIC foods) for which the Agency bears fiscal responsibility.

1.8 “Administrative Obligations” means activities pursuant to federal or state laws or regulations (such as verification of eligibility, verification of service delivery, detection of fraud, monitoring of quality assurance, audit of expenditure reports) which provide for accountability in the use of public funds.

Basic Principles

Presumption of Confidentiality

All information specific to, and identifying of, individuals and families is presumed to be confidential and subject to these standards. Employees shall not disclose the information unless a specific exception to the presumption applies or the disclosure is authorized by the client, a court or as otherwise authorized by law or rule.

Existing Statutes

These rules are not intended to expand or diminish current provisions in law relating to disclosure of confidential information.

Information Collection

Employees shall collect and record only that information needed to fulfill the goal of serving the client and meeting administrative or legal obligations.

Informing Clients

At the initial meeting with each client, or within two weeks, employees shall review and offer to provide the rules for access to information to the client.

Permissible Disclosures

Client consent

No information about a client shall be released without prior consent from the client, unless directly connected with the administration of a program or necessary for compliance with federal or state laws or regulations.

Sharing "Non-identifiable" Information

Information that does not identify a client may be used for statistical research, forecasting program needs, or other such purposes.

Public Information

Information defined as public by 1 VSA & 317 or other applicable statute is available to the public. The procedures in the public records statute shall be followed before public information is released.

Information Sharing for Administrative Purposes

Employees may share information which is necessary to satisfy the Agency's administrative obligations. Departments will develop written agreements limiting the kinds of information to be shared when programs are jointly administered by different Departments. No information shall be released to a person or entity that is out of state, unless directly connected with the administration of a program or necessary for compliance with federal or state laws or regulations.

Disclosure Without Consent in Limited Circumstances

Employees must release sufficient information to comply with mandatory reporting requirements for cases involving the abuse, neglect, or exploitation of children and persons who are elderly or who have disabilities. Information may be released without consent when Vermont law creates a duty to warn identified individuals of potential harm to their person or property, in response to court orders, or to investigate or report criminal activity as required by federal or state law or regulation. Only information relevant to the situation shall be disclosed. The employee shall document the date, purpose and content of the report, the name, address and affiliation of the person to whom the information was released, and shall notify the client that the information was disclosed.

Procedures Related to Consent

Obtaining Informed Consent

Prior to releasing confidential information the Agency shall obtain the client's informed consent. This includes providing information about consent in a language and format understandable to the client. Reasonable accommodations shall be made for special needs based on the individual or family's education, culture, or disability. Employees shall inform clients that granting consent is not a pre-requisite for receiving services, and shall explain that they may apply for services separately.

Consent of Minors to Release of Information

Employees shall obtain the consent of a minor client to release information concerning treatment for which parental consent is not required.

Format for Consent to Share Information

Consent for the sharing or release of information shall ordinarily be in writing. If an emergency situation requires granting of verbal consent, written consent shall be obtained at the next office visit or within thirty days, whichever comes sooner. Required information will include:

1. Names of the people about whom information may be shared.
2. A checklist of the kinds of information to be shared.
3. A checklist of the departments within the Agency to receive the information.
4. A statement or date covering expiration of consent.
5. A statement about procedures for revoking consent.
6. Signature of individuals covered by the consent, or their parents or guardians.
7. Signature of the individual explaining the consent process with their position and job title.
8. A space to provide individualized instructions.

A copy of the consent form shall be provided to all signatories.

Client Access to Records

Unless prohibited by federal or state law or regulation, clients shall be permitted to view and obtain copies of their records. Each department within the Agency shall have written procedures which permit clients to verify personal information they have provided for accuracy and completeness and for placing amendments to the information in their files. Employees shall take reasonable steps to present records in a form accessible to the client, including but not limited to large type format or verbal review. A fee not to exceed the actual cost of copying may be charged for records exceeding 10 pages. This fee shall be waived if it would prohibit access.

Procedures to Protect Confidentiality

Staff Training

All AHS employees and all AHS volunteers and interns, shall be instructed in these rules. AHS shall train their Contractors and grantees who shall, in turn, provide the same instruction for their employees, interns, and volunteers.

Response to Requests for Information

An employee shall not respond to requests from outside the Agency for information about clients even to acknowledge that the person is a client, unless authorized. If a client has consented to or requests that information be released, the employee shall comply with the request.

Designated Individual

Each agency or department shall appoint one or more trained staff members to be responsible for responding to all requests for client information when there is no written consent to release, and no statutory or administrative authority permitting release of the requested information. These individuals shall be specially trained in maintaining confidentiality. A list of the designated individuals for each department and office shall be maintained in the Attorney General's Office, Human Services Division.

Affirmation of Understanding

Employees shall sign an affirmation that they will comply with these rules. This affirmation shall be part of their personnel files. Supervisors shall review this affirmation during annual evaluations. Violation of these rules shall result in disciplinary action.

Written Agreements with Grantees or Contractors

The following assurance, or one similar to it, will be included in all AHS grants/contracts signed after these rules have been approved:

[Grantee/Contractor] agrees to comply with the requirements of AHS Rule No. 96-23 concerning access to information. The Contractor shall require all of its employees to sign the AHS Affirmation of Understanding or an equivalent statement.

Client Referrals

When referring a client to another agency for services, if the referral does not meet the criteria for permissible disclosures under Section 3.4, the initial agency shall obtain the consent of the client for the referral and alert the receiving agency that confidential client information accompanies the referral.

Documentation of Disclosure

Requests for disclosures of client information shall be maintained in the client's file if the request does not meet the definition of a permissible disclosure under Section 3.4. Employees shall document in writing any information actually disclosed, along with the name of the person/agency to whom it was disclosed and the date of the disclosure. When permissible disclosures are made under Section 3.4, documentation may be limited to the name of the department/agency/program to whom the disclosure was made.

Information Systems

Computerized Information

When developing a computerized data system, the Agency shall:

1. Develop security procedures consistent with the rule;
2. Instruct staff in the security procedures;
3. Inform clients if a computerized system is being used;
4. Establish written agreements with participating agencies outlining procedures for sharing and protecting information.
5. Develop security procedures in relation to the transmission of information.

Security Procedures

The Agency shall develop a protocol which is consistent with the requirements of this rule to safeguard confidential client information. Contractors and grantees shall also develop a protocol or shall adopt the protocol of the Agency. The protocol shall be designed to safeguard written information, data in computer systems, and verbal exchange of information. The protocol shall prohibit unauthorized access to records and include an appropriate disciplinary process for violations of the security rules.

Procedures

Written procedures for implementing these rules shall be used as the basis for employee Instruction and shall be available for review in the Agency Central Office.

AGENCY OF HUMAN SERVICES
103 South Main Street
Waterbury, Vermont 05676

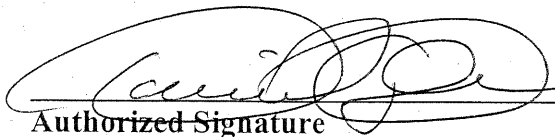
AFFIRMATION OF UNDERSTANDING STATEMENT

As a Contractor for the State of Vermont, I affirm that I have read the Agency of Human Services (AHS) Rule No. 96-23 concerning Access to Information, and that I agree to comply with the requirements of AHS Rule No. 96-23.

I shall require all of my employees performing services under this contract, to sign an affirmation of understanding statement. Employee statements need not be sent to the State. However, they shall remain in Contractor's personnel records. The State can request copies of such documents if necessary.

Milliman, Inc.
Name of Company (Print or type)

2-14-06
Date


Authorized Signature

Consulting Actuary
Title